

Chapter 42

ADULT USES

§ 42-1.	Purpose and intent.	§ 42-5.	Applicability.
§ 42-2.	Definitions.	§ 42-6.	Revocation; hearing.
§ 42-3.	Restrictions.	§ 42-7.	Penalties for offenses.
§ 42-4.	Licensing and registration.		

[HISTORY: Adopted by the Town Board of the Town of Elma 11-6-1996. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 144.

§ 42-1. Purpose and intent.

It is recognized that buildings and establishments operated as adult uses have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the citizens of the Town of Elma, this section is specifically designed to provide that special regulation necessary on such uses in order to prevent proliferation in concentration of such uses and ensure that those effects will not adversely influence the surrounding neighborhoods of whatever zoning.

§ 42-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADULT ARCADE — A person, establishment or business, whether retail or wholesale, having more than a minimal portion off its stock-in-trade, recordings, books, magazines, periodicals, films, videotapes/cassettes or any viewing materials for sale or viewing on or off the premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or a person, establishment or business containing a segment or section devoted to the sale or display of such material.

ADULT MOTION-PICTURE THEATER — An enclosed or unenclosed building, structure or portion thereof used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas for observation by patrons.

ADULT USES — Any person, establishment or business involved in the viewing or dissemination of material distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activity or specified anatomical areas, and including but not limited to adult arcade, adult motion-picture theater, massage establishment, private modeling establishment and steam bath establishment.

ANATOMICAL AREAS, SPECIFIED —

- A. Less than completely and opaquely covered genitals, pubic region or female breasts below a point immediately above the top of the areola.
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

BUSINESS — Any commercial enterprise, association or arrangement for profit.

DISSEMINATION — The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas.

MASSAGE ESTABLISHMENT — Any establishment having a fixed place of business where massages, body rubs, sports rubs, hot-oil body rubs or similar services are administered. This definition shall not be construed to include a hospital, bona fide medical or health service establishment, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed physical therapist, licensed massage therapist or barbershops, beauty shop and beauty salons in which massages are administered only to the scalp, face, neck or shoulders.

PERSON — Any individual, firm, partnership, corporation, club, association or legal representative, acting individually or jointly.

PORTION — Five percent of gross sales for any calendar year.

PRIVATE MODELING ESTABLISHMENT — Any establishment having a fixed place of business which has as its principal use or as an accessory use, a service of nude modeling or a service of modeling lingerie or similar clothing to an individual in a private room.

SEXUAL ACTIVITIES, SPECIFIED —

- A. Includes:
 - (1) Human genitals in a state of sexual stimulation or arousal.
 - (2) Acts of human masturbation, sexual intercourse or sodomy.
 - (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
 - (4) **SADOMASOCHISTIC ABUSE** — Flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing or bazaar costume; or the condition of such person be fettered,

§ 42-2 bound or otherwise physically restrained in an apparent act of sexual stimulation or gratification. § 42-2

- (5) SEXUAL EXCITEMENT — The facial expression, movements, utterances or other responses of a human male or female, whether alone or with others, whether clothed or not, who is in an apparent state of sexual stimulation or arousal or who experiences the physical or sensual reactions of humans engaging in or witnessing sexual conduct.

- B. The conduct described hereinabove in this definition is "sexual activity," whether or not it is engaged in alone or between members of the same sex, or between members of the opposite sex or between human and animal or between human and inanimate objects.

STEAM BATH ESTABLISHMENT — Any establishment which provides steam baths, hot tubs (whirlpools), saunas and similar facilities. This definition shall not be construed to include health clubs which have facilities for physical exercise, such as tennis courts, racquet ball courts or exercise rooms, and which have hot tubs (whirlpools), steam baths and/or saunas that are accessory to the health club or those bona fide medical or health services establishments which have accessory-use steam baths, hot tubs (whirlpools) or saunas for use in medical therapy.

§ 42-3. Restrictions.

In addition to other requirements of this chapter and the Code of the Town of Elma, adult uses shall be permitted subject to the following restrictions:

- A. No adult use shall be allowed within 1,000 feet of another existing adult use.
- B. No adult use shall be located within 1,000 feet of the boundaries of any district that is zoned for residential use.
- C. No such adult use shall be located within 2,000 feet of a preexisting school or place of worship.
- D. No adult use may be located in any zoning district except that which is zoned as industrial.
- E. Only one sign shall be permitted visible from the exterior of a building occupied by a regulated use, and such sign shall be no larger than 100 square feet, nor shall such sign consist of any material other than plain lettering. No sign shall have any photographic or artistic representation other than plain lettering whatsoever thereon.
- F. Exposure of materials through public view. No regulated use shall expose or cause to be exposed to public view, visible from the outside of the premises, any of the materials regulated by this chapter.

§ 42-4. Licensing and registration.

No person, firm, association, club, corporation or other entities shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment any part of which contains an adult use without first complying with the provisions of this section.

- A. In addition to all other required licenses and permits, no form of adult entertainment shall be permitted to operate until a certificate of registration is filed with the Town Clerk containing:
- (1) The name and address of the person, business or establishment subject to the provisions of this section. If the business is a partnership or corporation or a DBA (doing business as), then the names of the partners, the officers of the corporation, or the holder of the DBA and their respective addresses shall be filed.
 - (2) The address of the premises so regulated.
 - (3) The name and address of the owner(s) of the premises and the name and address of the beneficial owner(s) if the property is in a land trust.
 - (4) The name, business and home phone numbers of all those persons having substantial connection with the business or establishment, subject to the provisions of this section.
 - (5) The exact nature of the adult use.
 - (6) If the premises or the building in which the business containing adult use is located is leased or rented, a copy of said lease.
 - (7) If the establishment is a massage parlor or deals in any way with massage, then the application shall also contain the New York State certificate as a masseur or masseuse. This is a continuing requirement upon the employment of any new employees engaged in personal massage, and a certificate for any such new employees must be on file at the Town Clerk's office within five business days of their employment.
- B. Application for said permit shall be made through the Building Inspector's office on forms provided for that purpose and shall be accompanied by the fee determined by the Town Board. The Building Inspector shall examine said application and shall examine said building location and use for compliance with all New York State and local laws, including this chapter. Such inspections shall also include the usual inspection for compliance with the New York State Uniform Fire Prevention and Building Code and other local ordinances, resolutions, statutes and regulations. Upon completion of his initial inspection and examination, the Building Inspector shall refer the matter with any recommendations he may have as to safety, health conditions and security, to the Planning Board with notification to the Town Board. The Planning Board shall review the application for the same matters and shall provide a written recommendation to the Town Board within 60 days provided all information requested by the Planning Board of the applicant is received within 45 days. The Town board shall thereupon review the application with all supporting documentation and recommendations, if any, and shall accept the application, reject the application or accept the application with modifications. At any level of this process, any Town department may apply for assistance from outside agencies at the expense of the applicant, provided that the applicant is notified of the department's intention to request such assistance, the approximate cost of such assistance and the estimated time before such assistance can be provided. The applicant shall then affirmatively authorize said department to go forward with such request for outside assistance. Failure on the part of the applicant to provide said authorization, in writing, shall be deemed a withdrawal of the application if not provided within 10 days of the time that the Town provides the information necessary as to the assistance.
- C. If there occurs any change in the information required for the certificate of registration, the Town Clerk shall be notified of any changes and a new, amended certificate shall be filed within 10 days of such change.
- D. The processing fee for each certificate of registration or amendment thereto shall be as established from time

§ 42-4

§ 42-4

to time by the Town Board.

- E. Certificates of registration shall, unless revoked, be valid from one year from the date of issuance; and a certificate of amendment shall be considered to terminate when the certificate which it amends terminates.
- F. All fees are nonrefundable.
- G. No certificate of registration or amendment issued under the provisions of this section shall be transferrable or assignable to any other person, business or establishment without the written permission of the Town Board, nor shall any certificate of registration or amendment be transferable for use at any other premises, building or location other than that so stated and set forth in the certificate of registration or amendment.
- H. All certificates of registration must be prominently and conspicuously displayed on the premises, building or location for which it is issued by the owner, manager, or agent of the adult use.
- I. Any intentional or knowingly made false statement or any statement which a registered business or applicant should reasonably have known to be false, which is provided in the certificate of registration or any document or information supplied therewith, shall be grounds for rejection, suspension or revocation of the certificate.
- J. Periodic inspections by authorized police, agencies or departments within the Town shall be made. Such inspections shall be reasonable as to the time and the manner of the same.

§ 42-4

§ 42-5

§ 42-5. Applicability.

This chapter shall apply to any person, firm, corporation, club, association or other entity which actually engages in the conduct of a regulated use under this chapter and shall further and equally apply to the owner of any building, structure or premises upon which regulated use is conducted. Any violation of this chapter shall subject both the person, firm, club, association, corporation or entity conducting such regulated use and the owner and tenant of the premises upon which such regulated use is conducted to the penalties provided herein.

§ 42-6. Revocation; hearing.

- A. The Town Board reserves the power to revoke without notice any certificate of registration or amendment issued under the provisions of this chapter at any time in cases in which such certificates were procured by false representation of facts or for the violation of or failure to comply with any provision of this chapter by any registrant, his servant, agent or employees. In case of such revocation, no portion of any fee for such certificate shall be refunded.
- B. After any revocation, the registrant, upon request, shall be entitled to a hearing before the Town Board not less than 10 days after such revocation nor more than 30 days afterwards. All such requests must be in writing and given to the Town Clerk, who will set a date for the hearing, giving the registrant 10 days' notice thereof.

§ 42-6

§ 42-7

§ 42-7. Penalties for offenses.

- A. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or by both such fine or imprisonment.
- B. The continuation of an offense under this chapter shall constitute, for each day the offense continues, a separate and distinct violation herein.

